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IN THE
COURT OF APPEALS OF INDIANA

RONALD PHEGLEY and NORMA PHEGLEY,	)	
	)	
Appellants-Plaintiffs,	)	
	)	
vs.	)	No. 77A01-0607-CV-323
	)	
JAMES STRICKLIN as HAMILTON TOWNSHIP ASSESSOR, JEAN HARRIS as SULLIVAN COUNTY AUDITOR, JUNE LADSON as SULLIVAN COUNTY TREASURER, JOHNNIE WATERMAN as SULLIVAN COUNT SHERIFF, VICKI TALPAS as SULLIVAN COUNTY ASSESSOR, and the SULLIVAN COUNTY BOARD OF COMMISSIONERS, REGIONS BANK as SUCCESSOR BY MERGER FOR UNION PLANTERS, as SUCCESSOR BY MERFER for AMBANK INDIANA NA,	)	
Appellees-Defendants.	)	

APPEAL FROM THE SULLIVAN CIRCUIT COURT
The Honorable P.J. Pierson, Judge
Cause No. 77C01-0506-PL-184

March 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issues

Ronald and Norma Phegley appeal the trial court's denial of their motion for summary judgment and order of partial summary judgment finding that the Phegleys were not entitled to relief from a tax lien attached to a parcel of their real property. On appeal, the Phegleys raise a single issue, which we restate as whether the trial court properly found that the Phegleys were not entitled to relief under Indiana Code section 6-1.1-9-4. Concluding that the Phegleys have failed to demonstrate that any issue of material fact precludes the trial court's order, we affirm.

Facts and Procedural History

When the trial court issued its order of partial summary judgment, it made the following findings:[1]

1. This case is a quiet title action to establish that the real estate taxes impose no lien upon the real estate under Indiana Code § 6-1.1-9-4.
2. The Defendants are elected officials of county and township offices in

[1] As discussed below, the Phegleys have not provided this court with any materials other than their appellate brief, the trial court's order, and the transcript from the hearing on the Phegleys' motion for summary judgment. No witnesses testified at this hearing, which consisted solely of the parties' attorneys' arguments. Instead of relying on the Phegleys' characterization of the facts or counsels' arguments, which are not considered evidence upon which the trial court may base factual determinations, see El v. Beard, 795 N.E.2d 462, 467 (Ind. Ct. App. 2003), we prefer to simply reproduce the facts as characterized by the trial court. Cf. Hughes v. King, 808 N.E.2d 146, 148 n.3 (Ind. Ct. App. 2004) (noting that when a party fails to include the chronological case summary in the record, we have "no way of determining whether the parties' statements of the case are accurate").

Sullivan County, Indiana.

3. The Hamilton Township Assessor mailed a notice of assessment (Form 11 R/A) to Rex Eric Drake and Shawna D. Drake (the "Drakes") on June 7, 2001, and the notice was actually received by Rex Eric Drake after his divorce from Shawna Drake.
4. As of June 29, 2001, there was no record in the offices of the Sullivan County Treasurer, Auditor or Recorder of a proposed corrective assessment and a normally diligent title search would not have revealed the existence of the assessment.
5. The [Phegleys] acquired the real estate that was the subject of the assessment by a Sheriff's sale conducted on June 29, 2001, in the foreclosure by Union Planters against [the Drakes] . . . in the Sullivan Circuit Court, by the Sheriff's Deed dated July 11, 2001, and recorded in the office of the Recorder of Sullivan County on July 19, 2001 . . . .
6. The Hamilton Township Assessor entered tax assessment notations . . . on Hamilton Township tax assessment records for the tax years of 1998 payable in 1999, 1999 payable in 2000, and 2000 payable in 2001, on July 20, 2001, which date was 21 days after the Plaintiffs acquired the Real Estate from the Sheriff's sale that occurred on June 29, 2001.
7. Indiana Code § 6-1.1-9-4 provides that a prior year assessment imposes no lien upon real estate owned by a bona fide purchaser without knowledge. The text of the statute is as follows:

   6-1.1-9-4 Prior year assessment, notice; bona fide purchasers, lien exemptions Sec. 4 (a) Real Property may be assessed, or its assessed value increased, for a prior year under this chapter only if the notice required by section 1 of this chapter is given within three (3) years after the assessment date for that prior year.

   (b) With respect to real property which is owned by a bona fide purchaser without knowledge, no lien attaches for any property taxes which result from an assessment, or an increase in assessed value, made under this chapter for any period before his purchase of the property.
8. Indiana Code § 33-26-3-1 only gives jurisdiction to the Indiana Tax Court in a ". . . case that arises under the tax laws of Indiana and that is an initial appeal of a final determination made by:

   (1) the department of state revenue with respect to a listed tax (as defined in Indiana Code § 6-8.1-1-1); or

   (2) the Indiana board of tax review."
9. The Plaintiffs do not object to or appeal from a determination of tax, and therefore, this case is not an appeal of tax determination that confers jurisdiction upon or limits jurisdiction to the Indiana Tax Court under Indiana Code § 33-26-3-1.
10. The Plaintiffs were not the ". . . owner[s] [or possessors] of . . . [the] real property on the assessment date of . . . the year[s]" identified in the Form 11

R/A described in Plaintiff's Motion for Summary Judgment, and consequently, cannot be personally liable for the prior year assessment under Indiana Code § 6-1.1-2-4.

11. Indiana Code § 32-30-10-14 requires that [t]he proceeds of a [Sheriff's] sale described in Indiana Code chapter 32-39-7 or section 8 or 12(b) of [chapter 32-30-10] must be applied in the following order:

    ****

    (2) The amount of any property taxes on the property sold:

        (A) that are due and owing; and

        (B) for which the due date has passed as of the date of the sheriff's sale.

    The sheriff shall transfer the amounts collected under this subdivision to the county treasurer not more than ten (10) days after the date of the sheriff's sale.

12. It is the normal expectation of a Sheriff's sale purchaser that the Sheriff's compliance with Indiana Code § 32-30-10-14 will cause all property tax liens to be satisfied and released.

13. The Sullivan County Sheriff fulfilled his statutory obligation to satisfy the property taxes from the Sheriff's sale proceeds as much as possible because the corrective assessment could not be known to the Sheriff up to and including the time of the Sheriff's sale at the Sheriff's sale on June 29, 2001.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The Plaintiffs are not liable for the real estate taxes determined for the property for the tax years of 1998 payable in 1999, 1999 payable in 2000, and 2000 payable in 2001, but the lien for those taxes remains a lien upon the Real Estate and the Plaintiffs' Motion for Summary Judgment is denied to the extent that they sought an adjudication that the lien did not attach to the Real Estate under Indiana Code § 6-1.1-9-4.

2. [The Drakes] remain personally liable for the real estate taxes determined for the property for the tax years of 1998 payable in 1999, 1999 payable in 2000, and 2000 payable in 2001.

3. There is no reason for delay and judgment is entered under Trial Rule 56(C) as to the issues treated herein.

The Phegleys now appeal.

Discussion and Decision

I. Standard of Review

Summary judgment is appropriate when the evidence shows that "there is no genuine

issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). The trial court's decision on a motion for summary judgment comes to us cloaked with a presumption of validity. Rodriguez v. Tech Credit Union Corp., 824 N.E.2d 442, 446 (Ind. Ct. App. 2005). Therefore, the party appealing the trial court's order has the burden of persuading us that the trial court's order was improper. Afolabi v. Atl. Mortg. & Inv. Corp., 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006). However, we review a trial court's grant or denial of summary judgment de novo. Univ. of S. Indiana Found. v. Baker, 843 N.E.2d 528, 532 (Ind. 2006). We may affirm the trial court's grant of summary judgment upon any basis that the record supports. Rodriguez, 824 N.E.2d at 446.

Also, in this case the appellees did not file an appellate brief. When an appellee fails to submit a brief, we will not undertake the burden of developing an argument on the appellee's behalf. Trinity Homes, LLC v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006). Instead, we will reverse if the appellant shows prima facie error, which in this context is defined as "at first sight, on first appearance, or on the face of it." Id. (quoting Santana v. Santana, 708 N.E.2d 886, 887 (Ind. Ct. App. 1999)). If the Phegleys make no showing of prima facie error, we will affirm. Id.

II. Trial Court's Grant of Partial Summary Judgment

Summary judgment is governed by Indiana Trial Rule 56(C), which provides in part that:

> At the time of filing the motion or response, a party shall designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes

> of the motion. A party opposing the motion shall also designate to the court each material issue of fact which that party asserts precludes entry of summary judgment and the evidence relevant thereto.

The Phegleys argue that the trial court's order was improper because the appellees failed to demonstrate that the Phegleys were not bona fide purchasers without knowledge of the assessment, and that therefore, the lien does not attach to their property. We conclude that the Phegleys have failed to demonstrate that any issue of material fact precludes summary judgment.

When we review a trial court's decision regarding a motion for summary judgment, we may consider only those materials that the parties have specifically designated to the trial court in support of or in response to the motion for summary judgment. St. Joseph County Police Dept. v. Shumaker, 812 N.E.2d 1143, 1145 (Ind. Ct. App. 2004), trans. denied. The party appealing the trial court's summary judgment order has the responsibility of providing this court with those materials designated to the trial court relating to the summary judgment motion. Yoquelet v. Marshall County, 811 N.E.2d 826, 829 (Ind. Ct. App. 2004) (citing Ind. Appellate Rule 50). Because the Phegleys have not provided this court with the materials on which the trial court relied when issuing its summary judgment order, the Phegleys have failed to meet their burden of showing prima facie error, and have not overcome the trial court's order's presumption of validity. See Yoquelet, 811 N.E.2d at 830; see also Hughes, 808 N.E.2d at 148 (dismissing appeal where appellant failed to provide a complete copy of evidence designated to the trial court).

We recognize that we have expressed our preference for deciding issues on their merits where possible. See, e.g., Kelly v. Levandoski, 825 N.E.2d 850, 856 (Ind. Ct. App.

2005), trans. denied. However, in this case, the Phegleys have not provided us with the materials relied upon by the trial court, and the appellees have filed no materials whatsoever. See Yoquelet, 811 N.E.2d at 830 (recognizing that "[w]ithout the designated evidence, which the trial court relied upon in drafting its summary judgment order, we cannot review the trial court's decision"); cf. Hughes, 808 N.E.2d at 147 ("Although we prefer to dispose of cases on their merits, where an appellant fails to substantially comply with the appellate rules, then dismissal of the appeal is warranted.").

If we faced merely a technical violation of the rules of appellate procedure,[2] but still were able to adequately review the trial court's decision, we would address the merits of the Phegleys' arguments. See Kelly, 825 N.E.2d at 856 (deciding issues on merits where appellant had violated appellate rules by failing to include necessary items in its appendix, but appellee had provided the materials in its appendix). However, the only materials supplied to this court are the trial court's order and the transcript from a hearing on the Phegelys' motion for summary judgment. This transcript is not particularly useful for our review, as it contains only the parties' attorneys' arguments, which are not evidence that the trial court may consider when making a factual determination. El, 795 N.E.2d at 467. We do not have a copy of the chronological case summary, without which we cannot even be sure that the hearing for which we have a transcript was the only hearing on this matter. See Hughes, 808 N.E.2d at 148 n.3 (recognizing that "without a copy of the chronological case summary for the trial court, as required by Appellate Rule 50(A)(2)(a), we have no way of

[2] The Phegleys did not file an appendix, thereby violating Indiana Appellate Rule 49(A), which states: "The appellant shall file its Appendix with its appellant's brief."

determining whether the parties' statements of the case are accurate."). Also, as we do not have copies of any exhibits or the complaints, the Phegleys' citations to these sources are not helpful to our review. See id. at 148 (referring to appellant's citations to documents not provided to the court as "meaningless"). In sum, we have before us no evidentiary basis from which we can analyze the trial court's order. The Phegleys have therefore failed to meet their burden of demonstrating prima facie error.

Conclusion

We conclude that the Phegleys have failed to meet their burden of making a prima facie showing that the trial court's order of partial summary judgment was improper.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.